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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)
)
Amendment of the Commission's Rules) WT Docket No. 97-82
Regarding Installment Payment)
Financing for Personal Communications)
Services ("PCS") Licensees)
Installment Payment Restructuring)

To: The Commission

COMMENTS OF ALPINE PCS, INC.

Alpine PCS, Inc. ("Alpine"), by its attorneys and pursuant to FCC Rule Section 1.415, submits its comments on the Commission's *Second Report and Order and Further Notice of Proposed Rule Making*, FCC 97-342 (October 16, 1997) ("*Further Notice*") in the above-referenced proceeding, and shows the following.^{1/}

1. The *Further Notice* proposes rules to govern the re-auction of block C PCS spectrum which may be turned in by licensees pursuant to the relief options adopted therein.^{2/} Alpine finds that in three specific areas, modification of the Commission's proposal is necessary to ensure that entrepreneurs have a

^{1/} These comments are predicated on the assumption that the Commission will not substantially modify the substance of relief adopted with respect to C block licensees on reconsideration of the *Further Notice*. See *Further Notice*, at paras. 23-69. Inasmuch as Alpine believes modification is appropriate, Alpine reserves the right to amend these comments following the Commission's reconsideration decision's release.

^{2/} Licenses to be re-auctioned would include: (1) all licenses representing disaggregated spectrum surrendered to the Commission under the disaggregation option; (2) all licenses surrendered to the Commission on or before January 15, 1998, by incumbent licensees who choose to take advantage of the Commission's prepayment or amnesty options; and (3) all PCS C block licenses currently held by the Commission as a result of previous defaults. *Further Notice*, at para. 83.

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meaningful opportunity to bid for and hold re-auctioned C block licenses.

2. The first area where modification of the proposed re-auction is appropriate applies to those parties eligible to bid in the re-auction. Alpine agrees with the Commission that entities that applied for the original C block auction, and current C block licensees, except as restricted pursuant to the specific terms of the various relief options adopted, should be eligible to participate in the re-auction. See *Further Notice*, at para. 84. However, Alpine recommends that the Commission significantly tighten the requirements for companies to be considered "small" or "very small" businesses, as applied to new re-auction entrants, so that only true small business entrepreneurs are allowed entrance into the re-auction.

3. Alpine emphasizes it would not restrict bidding by any entity previously participating in the C block auctions; however, with respect to additional bidders, the Commission should carefully scrutinize the bona fides of claims by entities affiliated with large multinational corporations and similar entities to ensure that they are true small business entrepreneurs. Otherwise the Commission will see the same type of inflated bidding that occurred in the original C block auction, with the result that true small business entrepreneurs (as to which the FCC has a Congressional mandate to foster an opportunity to participate in the provision of spectrum-based services) will be substantially frozen out of any re-auction of spectrum.

3. In earlier comments, Omnipoint suggested application of an aggregation method for determining if an entity is truly a small business. That approach would have used a "multiplier," similar to that employed in other areas of Commission practice, to determine compliance with financial caps. Under the multiplier, the equity, revenues and assets attributed to an applicant would be based on the equity, revenues and assets of each attributable investor, multiplied by the percentage ownership interest in the applicant that investor holds.

4. The FCC did not adopt Omnipoint's proposal to determine entrepreneurs' block eligibility and small business size status by separately evaluating the assets and revenues of each attributable investor. Instead, the Commission suggested that aggregating the gross revenues and total assets of all attributable investors in, and affiliates of, an applicant is central to an accurate size determination, and that this approach was consistent with the Small Business Administration's approach to similar determinations. The Commission further stated that, "Viewing gross revenues and assets of each investor in isolation could result in very large entities bidding for these licenses." See *Fifth Report and Order*, PP Docket No. 93-253, FCC 94-285, para. 25 (1994). The Commission therefore rejected Omnipoint's suggestion to use a multiplier approach to make size determinations, explaining that, "A multiplier is appropriate to arrive at an accurate determination of ownership interest in an applicant or licensee. In this context, however, we are not concerned with ownership, but instead seek to make a

financially-based size determination in order to assess whether an applicant is eligible for significant governmental benefits." *Id.*

5. Evident in the problems occurring after the C block auction, the FCC should have been concerned with ownership -- assets as well as revenues. Several multinational companies with billions of dollars in revenues and assets created "small businesses" companies to bid in the C block auction. Now, these billion dollar owners are claiming that their newly created pseudo-companies are unable to repay the debt on the licenses acquired in the auction because the prices were too high, unmitigated by the fact that these companies were largely responsible for creating the high prices.

6. Alpine understands that because a company invests in another, it is not in essence creating an affiliate. However, the pseudo-small business companies created were not and are not consistent with the spirit of the terms the Commission defined to meet its Congressional mandate to ensure that true small business entrepreneurs have an opportunity to participate in the provision of spectrum-based services.

7. It is apparent that the Commission has not fully learned from its C block auction experience, as it is now proposing a second tier of small businesses -- "very small" businesses -- defined as companies with fewer than \$15 million of revenue for each of the preceding three years. The problem is that any new entity will obviously qualify for this category as its revenues will be reported as zero. The FCC must address the equity, assets

and revenues of the new companies' owner/investors to ensure that the participants are truly "very small" business entrepreneurs.

8. A second area where modification of the proposed re-auction rules is necessary is in the payment provisions. Alpine does not object to the requirement for a 20 percent down payment, especially given the Commission's experience with substantial defaults in the original C block auction. Requiring a 20 percent down payment should help deter speculation and ensure that only qualified bidders are awarded licenses in the re-auction. However, given the FCC's intent to fulfill the original Congressional mandate to true small business entrepreneurs, both original and new C block applicants meeting the aggregation criteria should be relieved of the requirement of full cash payment upon the successful winning of new licenses. *See Further Notice*, at para. 101.

9. The Commission should not abolish the opportunity for installment financing of true small business entrepreneurs bidding in the C block re-auction. True small business entrepreneurs, especially ones who bid in the first C block auction, should not -- now that defaulting bidders are out of the way -- have the terms changed for them. Rather, Alpine suggests the Commission establish specific criteria that bidders must meet to be afforded installment payment treatment in the re-auction. Those criteria should include: (1) that the bidder has not defaulted on any installment debt owed the Commission; (2) that the bidder has not surrendered to the Commission any licenses pursuant to the relief options the

Further Notice affords; and (3) that the bidder, including all de facto managers and investors holding equity in the bidder (and their affiliates), whether in a control group or not, have an attributable net worth not exceeding 50 million dollars, and attributable gross revenues over the preceding three years not exceeding 25 million dollars.

10. The third area in which the proposed re-auction rules require revision is with respect to the issue of the appropriate interest rate for the installment payments that the Commission should retain as a financing option for true small businesses. Alpine suggests that the rate should be equal to the average yield on the 10 year Treasury note for the ten business days preceding commencement of bidding. This will avoid the anomalous result that was obtained with the original C block auction. There, when the original C block auction commenced in December of 1995, the yield on the 10 year Treasury Note was 5.56 percent; it subsequently rose to 6.53 percent when Alpine's block C licenses were awarded. The Commission, however, set the interest rate for Alpine's installment payments at the coupon rate of the Treasury Note, seven percent, which had no relation to the government's actual cost of funds at any time during the auction.

11. The installment payment interest rate should be the government's cost of funds when the auction begins. This will be the rate on which Alpine and other PCS re-auction bidders base their bidding strategies. Licensees should know their cost of funds when they bid. The choice of the coupon rate, which is

arbitrarily set by the Treasury, or the yield when licenses are issued well after bidding closes, is unfair to licensees and serves to add unnecessary risk and uncertainty to the auction process. The Commission should, therefore, set the interest rate at the yield existing when the C block re-auction begins.^{3/}

12. In summary, limited modification of the proposed C block auction rules is necessary to ensure an opportunity for continued entrepreneurship in the C block. Congress delegated this Commission the authority to conduct spectrum auctions. 47 U.S.C. Sec. 309(j). In so doing, it specifically tasked the Commission to develop and rapidly deploy new technologies, products, and services for the public benefit without administrative or judicial delay, to promote economic opportunity and competition, to ensure that new and innovative technologies are readily accessible to the public by "avoiding excess concentration of licenses, by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." 47 U.S.C. §309(j)(3)(A) & (B) (emphasis added). The modifications discussed above, limiting new participants in the re-auction to truly small business entities, maintaining installment payment terms for true small businesses and pegging the interest rate at the ten year Note rate

^{3/} The ten day average calculation is designed to control for the possibility of an unusual one day spike or dip in the Treasury markets.

when the re-auction begins, will serve to maintain the C block as a vehicle for entrepreneurship as Congress intended.

Respectfully submitted,

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